

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Romero Analyst: Jeani Brent Bill Number: AB 1220
Related Bills: See Legislative History Telephone: 845-3410 Amended Date: 04/26/1999
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Corporations to Provide and FTB to Publish Information on Certain Tax Credits Claimed By Corporations

SUMMARY

Under the Bank and Corporation Tax Law, this bill would require corporate taxpayers that claim specified credits to provide the department with specified information regarding the credits claimed and carried over, number of employees, and the wages and health benefits provided to its employees.

This bill also would require the department to publish the information provided by each corporation, including the corporation name. The bill would require the information also to be provided to the Legislature and the public in a manner determined by the department and to be published on the department's website.

EFFECTIVE DATE

This bill would be effective January 1, 2000.

LEGISLATIVE HISTORY

In March of 1995, Governor Wilson issued an executive order requiring all state agencies to provide public information on the Internet.

Enacted legislation: AB 797 (Stats. 1997, Ch. 461) requires the department annually to make available to the Trade and Commerce Agency and the Legislature information on the dollar value of the enterprise zone tax credits claimed each year.

SPECIFIC FINDINGS

Existing state law prohibits the disclosure of any information concerning any taxpayer by the department, except as specifically authorized by statute. Any department employee or member could face a criminal misdemeanor charge for release of confidential state tax information and a felony charge for release of confidential federal tax information.

Under existing state law, all information on an individual personal income tax return is confidential. For corporate returns, all information on a return is confidential, except extraneous matters, such as the exact corporate title, corporate number, the date of the commencement of business in this state, taxable year adopted, filing date of return, name, date and title of individuals signing affidavit to the return, due date of the taxes, taxes unpaid, entity's address, private address of officers and directors.

Board Position:

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Department Director

Date

Gerald Goldberf

05/10/1999

Extraneous matters, however, may be disclosed only in response to a request regarding a named entity and only if there is no reason to believe that the information will be used for commercial list purposes.

Existing state law, in limited instances, permits the department to release tax return information to certain state agencies, such as legislative committees, the Attorney General, the California Parent Locator Service, the directors of Social Services and Health Services, and California tax officials, such as the Board of Equalization, the Employment Development Department, the State Controller, and the Department of Motor Vehicles. State agencies must have a specific reason for requesting the information, i.e., tax investigation, verifying eligibility for public assistance, locating absent parents to collect child support, or locating abducted children. For some agencies, only limited information may be released, such as the taxpayer's social security number and address.

Existing state law permits the department to release tax return information according to tax return sharing agreements with the IRS, the Multistate Tax Commission (MTC), and taxing authorities of other states. The exchange must relate to the enforcement of tax laws, and the information must not be made public. Shared information includes sales tax, income tax, and corporation tax return data. The tax return information relating to multi-state and multi-national tax audits is shared with the MTC.

This bill would require corporate taxpayers that claim specified credits to provide the department with specified information regarding those credits claimed, number of employees, and the wages and health benefits provided to its employees. The information would be required to be included with the taxpayer's original return for each income year. The following are the credits enumerated in the bill:

1. Research expenses credit;
2. Enterprise zone hiring credit and sales or use tax credit;
3. Manufacturing enhancement area hiring credit;
4. Prison inmate labor credit;
5. Targeted tax area hiring credit and sales or use tax credit;
6. Joint strike fighter program credit;
7. Local area military base revitalization area hiring credit and sales or use tax credit;
8. Manufacturer's investment credit.

This bill would impose a \$1,000 penalty on taxpayers that fail to file with their returns the specified information regarding credits. The department would be required to impose this penalty and provide notice to the taxpayer beginning not earlier than the last day on which reasonable cause exists for failure to furnish the information. Ninety days after the notice by the department, this bill would impose an additional \$1,000 penalty for each 30-day period (after the first 90 days) during which the failure continues. The maximum penalty that would be imposed under this bill would be \$25,000.

This bill also would provide that any corporation failing to provide the specified information would not be allowed to claim any of the specified credits.

This bill also would require the department to publish the information provided by each corporation, including the corporation name. The bill would require the information also to be provided to the Legislature and the public in a manner determined by the department, including being published on the department's website.

Policy Considerations

California has a self-assessed tax system that relies on the responsiveness of the individual and corporate taxpayer to report the proper tax. A self-assessed tax system works only if the taxpayer has confidence that the information will be confidential and used only for the specified purpose. If tax information is used or disclosed for other than the specified purpose, the effectiveness of the state's self-assessed tax system may be diluted.

This bill would not apply to taxpayers (S corporation shareholders, partners, and sole proprietors) who claim the specified credits under the Personal Income Tax Law. Nor would this bill apply to the joint strike fighter property credit.

Implementation Considerations

Pursuant to discussions with the author's staff, the attached amendment would resolve the following concerns. If this bill is amended to resolve these implementation considerations, implementing this bill would be accomplished during the normal annual update.

1. Although this bill would require the department to annually publish and report the information provided by taxpayers, the department would not be able to publish and report the information in the year the taxpayer provides the information. Corporate tax returns may be filed any time during the year after March 15, depending on when the taxpayer's fiscal year ends. The department generally processes returns within six months of receipt. For instance, the return due date for corporate taxpayers with fiscal years beginning December 1, 1999, and ending November 30, 2000, is February 15, 2001, and with extension, September 15, 2001. The department would complete processing of these returns by March 2002. Thus, the earliest that data from all 1999 corporate returns could be included in a publication or report would be approximately June 2002. The amendments clarify that the information would be provided for the most recent year available.
2. Existing law permits a few exceptions to the general rule that it is a misdemeanor for any department employee to release confidential state tax information. Much of the information that would be required to be published under this bill constitutes confidential tax information that would not fall under any of the existing disclosure exceptions. The attached amendment would modify existing law to provide a disclosure exception for the publication of information required under this bill.

3. This bill states that the department must publish the information and states that the information must be provided to the Legislature and the public in a form and manner determined by the department. The attached amendment would clarify that the publication of the information would fulfill the requirement to provide the information to the Legislature and public.
4. This bill states that a taxpayer that fails to file the specified information with the department would not be allowed to claim any of the specified credits. The bill does not state for how long this abrogation would continue. The attached amendments would clarify that a taxpayer that fails to provide the information would be denied the specified credits only until the taxpayer complies with the requirement.
5. This bill would require taxpayers to file the information by "the ordinary due date" of the return. The attached amendment would clarify that the information is to be filed by the original due date or the extended due date if the return is filed on extension.
6. This bill states that the maximum increase in any penalty shall not exceed \$24,000. The amendment would clarify that this limit applies to each income year.
7. The provision in this bill regarding "reasonable cause" is unclear. The amendment would clarify that the penalty would not be imposed if a taxpayer could show that the failure to file was due to reasonable cause. Further, the amendment would provide that if the failure to provide the information was that the taxpayer merely forgot to attach it to the return, no penalty would be imposed if the taxpayer corrected the problem within 90 days.

Technical Considerations

Pursuant to discussions with the author's staff, the attached amendment would resolve the following concerns:

1. The attached amendment moves the proposed language into the Administration of Franchise and Income Tax Law, where other reporting requirements and penalty provisions are located. The amendment also would rearrange the language regarding the failure to furnish information and the requirement that taxpayers retain the information and make it available upon request.
2. The attached amendment would clarify that the information required to be filed by the taxpayer is information for the current income year.
3. The attached amendment would correct the name of one of the listed credits.

LEGISLATIVELY MANDATED REPORTS

This bill would require the department annually to report to the Legislature specified information for each income year.

FISCAL IMPACT

Departmental Costs

If this bill is amended to resolve the implementation considerations addressed in this analysis, the bill would not impact the department's costs.

Tax Revenue Estimate

This bill would not impact the state's income tax revenue.

BOARD POSITION

Pending.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 1220
As Amended April 26, 1999

AMENDMENT 1

Modify the bill as follows:

SECTION 1. Section ~~23105~~ 19141.7 is added to the Revenue and Taxation Code, to read:

~~23105~~ 19141.7. (a) Any taxpayer subject to tax imposed by Part 11 (commencing with Section 23001) and claiming credits allowed by any of the sections specified in subdivision (c) shall provide the following information as part of the taxpayer's original return for each income year in a form and manner specified by the Franchise Tax Board no later than the ~~ordinary~~ due date of that return, as provided in Section 18601, or the extended due date of that return, as provided in Section 18604:

(1) The name of the taxpayer claiming the credit.

(2) The amount of each credit specified in subdivision (c) claimed by the taxpayer in the ~~previous~~ income year.

(3) The amount of any carryover credits claimed by the taxpayer in the income year.

(4) The number of full-time equivalent employees employed by the taxpayer within this state as of the first day of the taxpayer's income year. For purposes of this section, ~~full~~ "full-time equivalent employees employees" shall be defined as the number of employees working 35 or more hours per week. Employees working fewer than 35 hours per week shall be reported as a fraction, the numerator of which is the number of hours worked by that employee in the prior week and the denominator of which is the number of hours in the taxpayer's standard full-time workweek.

(5) The median weekly wage or salary paid to the corporation's nonsupervisory employees during the income year.

(6) The share of health or medical insurance premiums paid by the corporation for nonsupervisory employees during the income year. For purposes of this section, ~~health~~ "health or medical insurance premiums premiums" shall be defined as any payment made with respect to health or medical insurance costs of the corporation's employees for which a deduction is claimed pursuant to Section 162 of the Internal Revenue Code, relating to trade or business expenses.

~~(b)(1) If a taxpayer claiming credits allowed by any of the sections specified in subdivision (c) fails to file the information in subdivision (a), the taxpayer shall pay a penalty of one thousand dollars (\$1,000) for each income year with respect to which the failure occurs.~~

~~(2)~~ A taxpayer claiming credits specified in subdivision (c) shall retain and make available to the Franchise Tax Board, upon request, any documents and information necessary to substantiate the information specified in subdivision (a).

~~(3) If the failure to file the information specified in subdivision (a) continues for more than 90 days after the date on which the Franchise Tax Board mails notice of that failure to the taxpayer, the taxpayer shall pay a penalty (in addition to the amount required under paragraph (1) of subdivision (b)) of one thousand dollars (\$1,000) for each 30 day period (or fraction thereof) during which the failure continues after the expiration of the 90 day period. The increase in any penalty under this subdivision shall not exceed twenty four thousand dollars (\$24,000).~~

~~(4) For purposes of this section, the time in which information is to be furnished (and the beginning of the 90 day period after notice by the Franchise Tax Board) shall be treated as beginning not earlier than the last day on which reasonable cause existed for failure to furnish the information.~~

~~(5) Any corporation failing to provide the information required by subdivision (a) shall not be allowed to claim any of the tax credits specified in subdivision (e).~~

(c) Subdivisions (a) and (b) shall apply to any taxpayer claiming credits allowed by any of the following sections:

- (1) Section 23609 (relating to qualified research expense).
- (2) Section 23612.2 (relating to enterprise zone sales tax).
- (3) Section 23622.7 (relating to enterprise zone wages).
- (4) Section 23622.8 (relating to manufacturing enhancement area wages).
- (5) Section 23624 (relating to inmate labor wages).
- (6) Section 23633 (relating to targeted tax area sales tax).
- (7) Section 23634 (relating to targeted tax area wages).
- (8) Section 23636 (relating to joint strike fighter wages).
- (9) Section 23645 (relating to local area military base ~~revitalization~~

~~recovery~~ area sales tax).

(10) Section 23646 (relating to local area military base ~~revitalization~~ recovery area wages).

(11) Section 23649 (relating to qualified manufacturing property).

(d) (1) If a taxpayer claiming credits allowed by any of the sections specified in subdivision (c) fails to file the information required under subdivision (a), the taxpayer shall pay a penalty of one thousand dollars (\$1,000) for each income year with respect to which the failure occurs.

(2) If any failure to file the information specified in subdivision (a) continues for more than 90 days after the date on which the Franchise Tax Board mails notice of that failure to the taxpayer, the taxpayer shall pay a penalty (in addition to the amount required under paragraph (1)) of one thousand dollars (\$1,000) for each 30-day period (or fraction thereof) during which the failure continues after the expiration of the 90-day period. The increase in any penalty under this paragraph shall not exceed twenty-four thousand dollars (\$24,000) with respect to any income year.

(e) Notwithstanding any other provision in Part 10, Part 11, or this part, none of the credits specified in subdivision (c) shall be allowed until the information required under subdivision (a) has been provided to the Franchise Tax Board by the taxpayer.

(f)(1) No penalty shall be imposed and no credit shall be denied under this section for any failure that is shown to be due to reasonable cause and not willful neglect.

(2) No penalty shall be imposed and no credit shall be denied under this section if the copy of the information required to be filed pursuant subdivision (a) was not attached to the taxpayer's return as originally filed but the taxpayer furnishes the copy of the information required to be filed pursuant to subdivision (a) either upon its own initiative or within 90 days of notification by the Franchise Tax Board of the requirements of this section.

(g) The Franchise Tax Board shall annually publish the information required by subdivision (a) for the most recent year available. This ~~report~~ publication shall include the name of any corporation claiming the credits specified in subdivision (c) along with all of the information required to be filed pursuant to subdivision (a). ~~This~~ The publication of this information shall be provided to the Legislature and the public in the form and manner as determined by the Franchise Tax Board and shall include posting on the ~~board's~~ Franchise Tax Board's Internet website.

SEC. 2. Section 19559 is added to the Revenue and Taxation Code to read: 19559. Notwithstanding any other provision of law, the Franchise Tax Board annually may provide to the Legislature and publish the tax credit information provided pursuant to Section 19141.7.